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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MONICA D., Petitioner, v. SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARMENT OF CHILDREN AND FAMILY SERIVCES, Real Party in Interest.	B157416 (Super. Ct. No. CK45527)

ORIGINAL PROCEEDINGS in mandate. D. Zeke Zeidler, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Donna Wright Bernstein for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Lois D. Timnick, Deputy County Counsel, for Real Party in Interest.

Mother seeks writ review (Welf. & Inst. Code, § 366.26, subd. (l); Cal. Rules of Court, rule 39.1B) [1] of the juvenile court's order terminating family reunification services with respect to Angel D. We deny the writ petition.

FACTUAL AND PROCEDURAL BACKGROUND

Angel D. was declared a ward of the juvenile court pursuant to section 300 based on a petition filed shortly after his birth which, as sustained, alleged Angel D. was born with a positive toxicological screen for cocaine, mother has a history of cocaine abuse and mother is a frequent user of cocaine which renders her incapable of providing regular care. Approximately one week after his birth, Angel D. was placed with maternal aunt who lives in the back house on the same property as maternal grandmother.

Mother enrolled in a residential drug treatment program on June 7, 2001, but relapsed between June 27, 2001 and July 16, 2001. Mother entered a second residential treatment program on July 20, 2001, but was discharged on September 4, 2001. The petition was sustained on September 12, 2001. On September 21, 2001, mother entered a third residential drug treatment program. On October 25, 2001, the juvenile court ordered mother to attend a Department of Children and Family Services (DCFS) approved program of drug rehabilitation with random testing, parent education and individual counseling. On January 23, 2002, mother was

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[1] Subsequent unspecified statutory references are to the Welfare and Institutions Code.

discharged from her treatment program for infraction of house rules. Mother enrolled in the one-year Rochester House program on February 7, 2002.

Mother initially did not visit Angel D. even though she visited maternal grandmother. However, in October, 2001, mother commenced weekly visits facilitated by maternal aunt. Maternal aunt reported mother and Angel D. had developed a loving bond since then. Mother received a total of eight hours of monitored visits a week from December 1, 2001 until January 23, 2002. Between January 23, and February 7, 2002, mother lived with maternal grandmother and visited Angel D. on a daily basis. Mother had weekly monitored visitation facilitated by maternal aunt at mother's treatment program.

The CSW noted mother "attended individual counseling, she attended daily groups, she tested negative, and she participated in parenting classes. However, she has not successfully completed court ordered counseling . . . ." The CSW noted Angel D. was happy and healthy in maternal aunt's home and maternal aunt wished to adopt if the child could not be returned to mother. DCFS recommended termination of family reunification services and identification of adoption as the appropriate permanent plan.

Mother testified at a contested six-month review hearing on March 20, 2002. Mother admitted relapses during her first three treatment programs even though mother never tested positive. Mother indicated she last abused cocaine on September 21, 2001, the day mother entered her third treatment program. Mother

claimed she experienced a change of priorities shortly before she entered Rochester House and indicated Angel D. could reside with mother after mother had completed six months of the program. Mother drug tested twice weekly on Tuesday and Thursday.

After hearing mother's testimony and argument of the parties, the juvenile court found DCFS had provided reasonable services and mother partially had complied with the case plan but had been terminated from three different drug programs and had been attending her current out-patient program for only six weeks. The juvenile court noted mother, by her own admission, had not actively participated in the first three programs she attended and six weeks of attendance at mother's current program could not be considered substantial progress, especially when mother should already have completed a six-month program and advanced to the point where Angel D. could be placed with her. The juvenile court found by clear and convincing evidence that mother had failed to participate regularly in the court ordered treatment plan and indicated it could not find there is a substantial probability Angel D. could be returned to mother within six months. The juvenile court encouraged mother not to abandon her efforts, reminded mother she could file a petition for modification if her progress continued and suggested DCFS might liberalize mother's visitation or even place Angel D. with mother before a contested permanency planning hearing could be set. However, the juvenile court could not

"find there is a probability [the child can be returned within six months] based upon [mother's] previous history of failure in programs."

The juvenile court set the matter for a hearing under section 366.26 on July 17, 2002.

CONTENTIONS

Mother contends DCFS failed to provide adequate family reunification services, the evidence showed a substantial probability Angel D. could be returned to mother within six months and there was insufficient evidence mother had failed to participate regularly in the case plan.

DISCUSSION

1. *Sufficiency of the family reunification services provided.*

Mother's assertion of inadequate family reunification services fails to indicate in what specific way services were lacking or what additional service DCFS might have provided. Indeed, at the contested hearing the parties disputed whether mother would receive an additional six months of family reunification services, not whether reasonable service had been provided. In any event, the record shows mother repeatedly was enrolled in drug treatment programs, completed parenting class and received regular monitored visitation. Thus, no insufficiency appears.

2. *The evidence supports the order setting a hearing under section 366.26.*

Mother contends the evidence showed a substantial probability Angel D. could be returned to mother within six months. Mother argues she was discharged from the drug treatment programs for poor behavior, not positive drug tests. Mother points out she currently is in a sober living facility and attends an outpatient program that drug tests mother twice weekly. Mother claims her testimony that she had turned her life around and that Angel D. could live with mother at her program within four months, combined with the evidence that mother had participated in the case plan and made substantial progress, renders the order setting a hearing under section 366.26 premature.

We disagree. Section 361.5, subdivision (a)(2), provides that, for a child who was under the age of three when the child was initially removed from the physical custody of his or her parent, "court-ordered services shall not exceed a period of six months from the date the child entered foster care." (§ 361.5, subd. (a)(2).) If the juvenile court finds by clear and convincing evidence the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to section 366.26 within 120 days. If, however, the court finds there is a substantial probability the child may be returned to his or her parent within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing. (§ 366.21, subd. (e).) We review the juvenile court's order

for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.)

Here, mother receive d 10 months of family reunification services. By her own admission, mother abused cocaine as late as September 21, 2001, and was not testing randomly in her current program. Although mother claims to have changed, the juvenile court properly may look to mother's conduct, as opposed to her words, as the most reliable indicator of mother's future behavior. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 424.) Given mother's repeated inability to complete a drug treatment program, her failure to demonstrate consistent sobriety by testing randomly as ordered, and her failure to advance beyond monitored visitation, the juvenile court acted reasonably in concluding the evidence did not show a reasonable probability Angel D. could be placed with mother within six months. The juvenile court encouraged mother and suggested mother could file a petition for modification if mother's recovery continued to progress as it had in the six weeks preceding the contested hearing. Hopefully, mother will heed the juvenile court's advice and the result of this writ petition will be rendered moot. However, based on the present record, the juvenile court did not act improperly in setting a hearing under section 366.26.

DISPOSITION

The writ petition is denied.

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KLEIN, P.J.

We concur:

CROSKEY, J.

ALDRICH, J.